DOCUMENT RESUME

ED 187 007 EA 012 679

AUTHOR Lisella, Carmine; Schwartz, Patricia
TITLE The Implications of Granting New Jersey Teachers the Right to Strike: A Public Policy Statement.
PUB DATE Dec 79
NOTE 64p.; Not available in paper copy due to marginal legibility of original document.

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Civil Rights; Elementary Secondary Education; *Labor Legislation; Public Policy; State Legislation; *Teacher Strikes
IDENTIFIERS *Assembly Bill 455 (New Jersey 1978); New Jersey; *Pennsylvania

ABSTRACT

Strikes are generally accepted as legitimate prerogatives of employees bargaining with employers in the private sector. Two broad questions must be answered when considering whether the right to strike should be granted public employees, including teachers. First, what are the distinctions between the public and private sectors that can reasonably support denying the right to strike to some employees? The evidence suggests that distinctions have been exaggerated and that only workers in truly essential services such as police and fire protection can reasonably be denied strike privileges. Second, do constitutional and statutory guarantees of civil rights outweigh the interests of the state in denying public workers the right to strike, and can there be true collective bargaining without such rights? Again, the evidence supports granting the right to strike. These issues can be argued in both legal and practical terms. The experience of Pennsylvania, the primary example of abuse of the right to strike, proves on examination to be the product of a unique situation and an originally inadequate law. An appendix includes the text of New Jersey Assembly Bill 455 of 1978 which this document was written to support. (Author/PGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED187007

EA 012 679

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Teachers College, Columbia University

The Implications of Granting New Jersey Teachers the Right to Strike: A Public Policy Statement

by

Carmine Lisella and Patricia Schwartz

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

C. Liscella
P. Schwartz

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

TA 6540

Professor Frank Smith

December, 1979

CONTENTS

	Page
TESTIMONY	iii
Chapter	
1. INTRODUCTION: THE DEBATE ON THE RIGHT TO STRIKE	1
2. LEGISLATIVE ANALYSIS	12
Constitutional Issues	12
The Laws and Their Performance	14
Legislative Trends	18
3. POSITIONS ANALYSIS	21
Introduction	21
Against the Right to Strike	22
In Favor of the Right to Strike	27
Strike Ban Effectiveness	31
4. THE PENNSYLVANIA EXPERIENCE	34
BIBLIOGRAPHY	44
Books, Articles and Study Commission Reports	44
Transcripts and Hearing Testimony	46
Correspondence and Communication	48
Statutes and Proposed Legislation	49
APPENDIXES	50
A. Assembly 455, New Jersey	50
B. Summary of Strike Activity, New Jersey	51

MAR 0 4 1980

TESTIMONY

Mr. Chairman, members of the Assembly Labor Committee:

As doctoral candidates at Teachers College, Columbia University, and under the aegis of Professor Frank Smith, we have spent a semester (Fall 1979) investigating the efficacy of right to strike legislation for school employees, the performance of existing right to strike laws in the public sector, and the implications of applying the collective bargaining strike model to school employees in New Jersey.

Having completed in depth investigations and deliberations, we can unequivocally recommend that the right to strike, through the enactment of Assembly 455, sponsored by Assembly Speaker Chris Jackman (Hudson), be extended to school employees in New Jersey. In developing a public policy statement, it is our view that granting the right to strike in the theoretical framework constitutes an extension of freedom which is in the public interest. On the practical level, public employee strikes are a fact of life. Laws prohibiting strikes do not prevent their occurrence and, when the statutes are silent, judge-made law prevails in the form of injunctions. These laws are always weakened by inequities in enforcement. Injunctions and anti-strike laws deny due process to the worker. In granting a school board ex parte

relief from a strike, the judiciary becomes a third party at the bargaining table and a potential coercive force in an otherwise democratic process. Essentiality of service is not exclusive to the public sector; therefore, applying that distinction to public sector employees is inappropriate and cannot logically be used to justify the strike ban in the public sector. Anti-strike laws and the unrestrained use of the injunctive process with the penalties which usually accompany them only serve to prolong and exacerbate conflicts.

Further, our investigation clearly shows that the existence of right to strike legislation has not led to a proliferation of strikes in other states. The unfavorable Pennsylvania experience develops out of peculiar historical and procedural circumstances. These conditions have been discussed and analyzed in depth in our accompanying documentation.

We strongly support A-455 because it provides for finality to the collective bargaining process. The right to strike would encourage the voluntary and expeditious resolution of interest disputes unencumbered by the imposition of a third party decision. This would ensure a final agreement mutually acceptable to both parties, thus avoiding post-impasse situations with concommitant irreparable harm to both sides.

Based on our inquiry, we propose the following recommendations:

1. immediate enactment of A-455
2. no binding arbitration unless agreed to by bargaining

parties

3. requirement that the parties bargain over alternative impasse procedures with the understanding that, if a voluntary agreement cannot be reached, the employees retain the right to strike

4. avoidance of the application of administrative regulations which impose rigid adherence to timetables for impasse procedures which have the effect of discouraging bargaining

5. consideration of the availability and training of qualified PERC personnel to assist in the impasse process.

We believe that true collective bargaining cannot occur in the absence of the right to strike and that providing balance to the process will serve to expedite fair settlements. We therefore vigorously support A-455 and encourage this committee to act favorably on this bill as soon as is practical.

Carmine Lisella
Patricia B. Schwartz

Chapter 1

INTRODUCTION: THE DEBATE ON THE RIGHT TO STRIKE

Unlike the private sector, in which the strike is generally accepted as the motive power for agreement in collective bargaining, legislation in the public sector has shown severe resistance or lack of political and social sensitivity to legitimizing such activity. Since the 1960's, however, the number of writers seriously proposing the strike as an option for public employees has grown. Even public opinion, long opposed to the notion of a public worker withdrawing services, softened to some degree.[1] Needless to say public employees, and especially school employees, have become less reluctant to accept the use of the strike as a legitimate weapon.

In examining the legitimacy, efficacy or consititutionality of granting public workers the right to strike two broad questions need to be addressed.

First; Are private sector labor practices and devices applicable to bargaining activity in the public sector? This first question for consideration gravitates around the distinctions between the sectors and by and large reflects economic and procedural considerations.

Those who oppose the right of public employees to strike frequently

---

[1] Lewis Harris and Associates. The Harris Survey Yearbook of Public Opinion. New York: Lewis Harris and Associates Inc., 1971.

do so on the basis that, unlike in the private sector, there are no competing market forces in the public sector that can set the limits of a strike. Under this assumption the private sector union, whose interests are not served by putting the employer out of business, has a built in reason to limit its demands. It is argued that the demand for government services is often inelastic and insensitive to a change in price. Thus, its opponents hold, that the public sector union does not have to face the same trade off in benefits and burdens as the private sector union; consequently it will demand more than its private sector counterpart.[2]

Some writers suggest that government employers have no right to withhold services and simply pass increased costs resulting from settlements on to the public in the form of higher taxes.[3]

Most writers deal with this issue by stressing the function of the tax rate in forcing the public employer to bargain hard and in limiting the demands unions can reasonably make. For the public employer, increases in tax rate could mean political life or death. Stuart Wolk describes wages and fringe benefits as direct aspects of budgetary allocations and tax decisions of legislators keeping a sharp eye on the public temperment and the public purse. It therefore, becomes the budget rather than

---

[2]Jack Ray. "The Compatability of Public Employment Collective Bargaining with Public Interest." Labor Law Journal 18: 1967. p. 754.

[3]Arvid Anderson. "Strikes and Impasse Resolutions in Public Employment." Michigan Law Review 67: 1969. p. 957.

the market place which acts as a restraint on collective negotiations with those in public employment.[4] In addition, it can be argued that the demand for government services is not so inelastic as some might assume. There is no prohibition preventing government from cutting back services or deciding to sub-contract others. It is becoming increasingly prevalent to see local government closing schools, hiring more teacher aides, adding administrative responsibility to those employed in schools or other government agencies, or closing libraries and public recreational facitlities for want of funds. In some cities garbage collection or maintenance work has been sub-contracted.[5]

This writer's observation relative to limits affecting union demands is one that is not found in the literature; one that largely affects the role of teacher unions and in current times a most persuassive argument against natural limits as a point of significance. There is a natural limit to the public sector unions demands. The limit is imposed by the public itself. It is reached when the union's demands are exposed and are deemed outrageous to the extent that they raise public anger to the point where the public is not willing to accede to them.

Another distinction of public sector employment is essentiality of services. Most authors, both proponents and opponents of the right to

---

[4]Stuart Wolk. "Public Employee Strikes." New York Law Forum 13: 1967. p. 69.

[5]Joseph R. Grodin and Donald Wollett. Labor Relations and Social Problems. Wash. D.C.: Bureau of National Affairs, 1975. p. 34.

strike, view the essentiality question as a specious argument and one that, although raised by lay people often enough, does not deserve serious consideration in the debate. Opponents like Carmen D. Saso see strikes by public workers as "a mass abduction" because some element of the public welfare, or a vital segment of cultural life such as public education is being subverted or made hostage.[6] Supporters argue that it is impossible to designate essentiality solely on the basis of employment descritpion. In the case of Anderson Federation of Teachers v School District of Anderson City, Judge De Bruber writes that it seems obvious that a strike by private employees would be far more disruptive to society than the peaceful teachers' strike involved. e.g., truck drivers who deliver milk to cities, factory workers who work in defense plants, agricultural workers, etc.[6a]

Secondly, there is evidence that the state usually implicitly or directly describes essentiality. With essential services such as police and firemen, the tendency is not to tolerate any strikes;[7] teachers strikes are generally tolerated for short durations and park maintenance personnel

---

[6]Carmen D. Saso. Coping With Public Employee Strikes. Chicago: Public Personnel Association, 1970. p. 37.

[6a]Grodin. p. 220.

[7]Increasingly, the use of binding arbitration procedures is being satutorily implemented in interest cases involving police and firemen. For useful discussions on the subject of final offer arbitration, compulsory arbitration and other arbitration forms see James Stern et al, Final Offer Arbitration (Lexington, Mass: Lexington Books, 1975) or Joseph Grodin, "Either-or Arbitration for Public Employee Disputes," (Industrial Relations, May, 1972) or Joan McAvoy, "Binding Interest Arbitration in the Public Sector," (William and Mary Law Review, Sumner, 1977)

are allowed to strike indefinitely.[8]

A third concept that opponents of duplicating private sector practices in the public realm look to is what Edwards calls "a perversion of the political process." Since the decision to allocate momentarily limited resources is political, the collective pressure of one group or another can subvert the equitable distribution of social priorities.[9] In reality, we may wonder about such distortion in a political process where, to be heard, any interest group from welfare mothers to local town councils or boards of education must be organized. Even if we were to admit that the political system is malfunctioning in this regard is no reason to institutionalize practices that would insure malfunction in the future.

The final concept pertinent to the first question is largely a procedural one and involves the division of authority in the public sector. It is argued that authority in government is often so fragmented that the employee may find himself bargaining with an executive or board member not directly in charge of fund distribution. In addition, in education a local board may have the added restraints established by state or local bodies to which it is subordinate. This problem has called for the restructuring of the bargaining relationship. Public employment boards are developing more authority within areas of scope and time lines, shifts

---

[8]Bureau of Labor Statistics. Labor Yearbook, 1978.

[9]B. Edwards. "Labor Relations in the Public Sector." Duquesne Law Review 10: 1972. p. 360.

away from local tax dependency are becoming more prevalent and inevitably many financial decisions will be removed from local school boards and centralized to intermediate or state-wide decision making bodies.

The second question that needs to be addressed is one that is founded on the issue of consitutionality and civil liberty. Can there be substantive (true) collective bargaining in the absence of the right of public workers to withhold services?

The oldest and now the most socially bankrupt argument against the consitutional right to free speech and assembly is the sovereignty theory. Emenating out of 16th century common law simply stated it holds that the ultimate repose of all legitimate societal power, the government employer, cannot be opposed by the countervailing power of labor unions. A strike by public workers is no more than an intent on their part to obstruct government operations until demands are met. Clearly a vestige from another era opponents to the "King can do no wrong" idea demonstrate the lack of constitutional sense in the idea. It has become possible for individuals to sue public bodies and there have been numerous other ways that legislatures have waived sovereign immunity. Secondly, since sovereignty refers to the peoples' will as expressed legislatively, "the doctrine does not preclude the enactment of legislation authorizing the government to enter into collective bargaining relationships."[10]

Third, the legalization of public worker strikes has been rationalized

---

[10] Kurt Hanslowe. The Emerging Law of Labor Relations in Public Employment. Ithaca, N.Y.: New York State School of Industrial and Labor Relations, Cornell University, 1967. p. 20.

with a similar argument; that is, the people can choose to allow public employees to strike.[11]

Albert Shanker tells an interesting anecdote that demonstrates the fall-out from the sovereignty issue. In 1960 the UFT was a small group representing 5% of the entire staff of New York City teachers. They asked the Board of Education for a collective bargaining election. The Board took the position that the Board was a government agent and as a sovereign body could not sit down and treat its subjects as equals. On November 7, 1960 the United Federation of Teachers had a one day walk-out. The Board of Education responded by saying "we are the Board of Education, we are a governmental agency, government enjoys sovereignty, sovereignty is king, and a king is all powerful: he is so powerful that if he wants to treat his subjects as equals and bargain with them, no one can prevent him from doing so."[12]

Another argument closely associated with the theory of sovereignty is that government employees have a commitment to extra loyalty. That is, that government workers owe more fealty to their employer. What form this allegiance was to take has been a dilemma and not founded in modern political reality. It has come to mean, by and large, an infringement on the constitutional right granted every other worker in America to withhold

---

[11]H.L. Fusilier and Laurence Steinmetz. "Public Employee Strikes: An Operational Solution." Quarterly Review of Economics and Business 7: 1967. p. 33.

[12]Albert Shanker. "Why Teachers Need the Right to Strike." Monthly Labor Review 99: September, 1973. p. 51.

services. It also relegates a growing number of the work force to dependence on the conscience of the government.

Closely related to this issue is one that Wellington and Winter refer to as "the Normal American Political process."[13] What sovereignty means, according to Wellington and Winter, is the right of government to ensure the survival of the normal American political process. Strikes by public workers threaten that process. Should we assume then that anything that is abnormal subverts the process of an era? Does normal mean avoiding methods or goals that disrupt existing power relationships. Granting blacks the right to vote disrupted the normal political process and shifted spheres of power not in accord with former political structures. This author submits that the normal process is a situational one; one that is fluid and normalcy should refer to the appropriate response of government to the exigencies of change within the political process.

In developing a public policy statement on the issue it is our view that granting the right to strike, in a theoretical framework, constitutes an extension of freedom which is in the public interest. On the practical level public employee strikes are a fact of life. Laws prohibiting strikes do not prevent there occurence[14] and when the statutes are silent, judge-made law prevails in the form of injunctions. These laws are always

---

[13]Harry Wellington and Ralph Winter. The Unions and the Cities. Wash. D.C.: The Brookings Institution, 1971. p. 126.

[14]Theodore Kheel. "Strikes and Public Employment." Michigan Law Review 67: 1969. p. 932.

weakened by their unequal applicability even within the various groups of public workers. The injunction or anti-strike law tends to deny due process to the worker. It is further contended that effective collective bargaining cannot exist without the right to strike because that element of due process has not been restrained from other American workers.

In talking about collective bargaining in the public sector, Theodore Kheel presses the urgency of the need for the strike as weapon in the collective bargaining encounter. He tells us that it is evident that collective bargaining is the best way of composing differences between workers and their employers in a democratic society. While collective bargaining is the superior type of industrial relations, collective bargaining cannot exist if employees may not withdraw their services.[15]

In granting a school board ex parte relief from a strike, or in some cases from the threat of a strike, the judiciary becomes a third party at the bargaining table and a potential coercive force in the collective bargaining process.

Wellington and Winter have discussed three reasons to justify collective bargaining and striking in the private sector: 1. achievement of industrial peace, 2. achievement of industrial democracy, and 3. collective bargaining compensates for the unequal bargaining power in individual bargaining.[16]

---

[15]Theodore Kheel. "Resolving Deadlocks Without Banning Strikes." Monthly Labor Review 92: 1969. p. 62.

[16]Harry Wellington and Ralph Winter. "The Limits of Collective Bargaining in Public Employment." Yale Law Journal 78: no 7 June, 1969. p. 1115.

These three reasons have equal relevance in the public sector. Strikes play the same role in the public and private sectors and private sector strike policy should be replicated in the public sector.[17] Strikes should not be banned without due process, but should be dealt with ex post facto by injunction in emergency situations only -- where severe and irreperable harm could be tested.

The strike model as opposed to the no-strike model is endorsed by most authors heavily involved in public sector labor relations and the following statement by Theodore Kheel seems to summarize the view of its supporters rather conclusively.

> "... we should give bargaining in the public sector the same opportunity it has received with beneficial results, in the private sector. The most effective technique to produce acceptable terms to resolve disputes is voluntary agreement of the parties, and the best system we have for producing agreement between groups is collective bargaining -- even though it involves conflict and the possibility of a work disruption. There is no alternative." 18

Implicit in Kheel's observation is the idea that any extension of freedom entails costs and a free society must be willing to tolerate inconvenience and disruption to the extent to which it is necessary.

Thus in deciding whether or not the right to strike should be extended to all workers the question addressed should not be an "either/or" one.

---

[17]John F. Burton and Charles Krider. "The Role and Consequences of Strikes by Public Employees." Yale Law Journal 79: no 3, January, 1970. p. 424.

[18]Theodore Kheel. "Strikes and Public Employment." Michigan Law Review 67: 1969. p. 942.

It is a qualitative decision that relies on the extent to which that liberty should be granted and the descriptive and procedural form that that legislation should take.

Chapter 2

LEGISLATIVE ANALYSIS

Constitutional Issues

In Chapter 1 we have provided a theoretical point of reference for the discussion of several issues: the essentiality of government services, the lack of a competitive market in the public sector, and the right of public employees to lobby for increased benefits.

Proponents of Wellington and Winter's no-strike model look to these issues "to ensure the survival of the normal American political process."[19] Unions which have actually helped their members either have made the strike a viable weapon or have developed relationships with their employers through patronage-political support mechanisms.[20] If this assessment is correct, choice of the no-strike model is likely to lead to patterns of decision making which will subvert, if not the "normal" American political process, at least the political process which Wellington and Winter meant to embrace. We would not argue that the misuse of political power could be eliminated by legalizing the strike; rather, in regard to most functions, the strike model has more virtues than the no-strike

---

[19] Wellington and Winter. 78: 1969. p. 1107.

[20] Grodin. 1975. p. 225.

model in terms of the efficacy of the collective bargaining system.

Although it has been effectively argued that there remains no constitutional guarantee to the right to strike and that the right of private employees to strike was arrived at only through legislation (The National Labor Relations Act, 1937) several constitutional cases have yielded interesting conclussions. In the United Federation of Postal Clerks v Winton Blount, Postmaster General of the United States, Circuit Judge Wright, in a minority opinion, states:

> My following comments are addressed to the main issue raised in Part I of the opinion -- the validity of the flat ban on federal employees strikes under the Fifth Amendment of the Consitution. This question is, in my view, a very difficult one, and I cannot concur fully in the majority handling of it.
>
> It is by no means clear to me that the right to strike seems intimately related to the right to form labor organizations, a right which the majority recognizes as fundamental and which, more importantly is generally thought to be consitutionally protected under the First Amendment -- even for public employees. If the inherent purpose of a labor organization is to bring workers' interests to bear on management, the right to strike is, historically and practically, an important means of effectuating that purpose. [21]

In the absence of a Supreme Court decision vis-a-vis the constitutionality of the right to strike, proponents of the collective bargaining-strike model must look to legislation or court rulings for relief and notwithstanding the constitutional problems associated with the right to strike, a trend toward extending the strike model to some or all of a state's public employees has become increasingly evident.

---

[21] Grodin. 1975. p. 233 - 234.

The recent enactment of laws governing public employee labor relations, developing legislative proposals in several states and recent court rulings on the state level seem to be demonstrating a willingness to replicate the private sector strike model in the public sector.

The Laws and Their Performance

At present, eight states (Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania, Vermont, and Wisconsin) grant the qualified or limited right to strike to some or all of their public employees. The chart on page 15 gives a summary of limited right to strike legislation and their relative performance.

The history governing public employees' right to strike is still new, but the development and performance of these laws does warrant specific observations. First, although eight states have granted public emplyees some form of the strike, each of these laws assumes essential differences in public and private employment. Each law is based on the concept of essentiality of public services. Consequently, seven of these states, all but Montana, have developed legislation which requires both management and labor to submit to a series of impasse procedures before a public employee group is free to strike. Some states, however, in defining conditions relative to public health and welfare have tried to define more precisely the delimitations that various groups of employees are subject to. The definitions of public welfare are at best vague. Some courts may find that any teachers' strike immediately endangers the

Summary of Limited Right to Strike Laws[22] and Strike Performance for Teacher Groups

State	Coverage	Impasse Procedures	Limits on Strike	Incidence of Strikes[23] from 1958 to	Incidence of Strikes[23] from passage date to 1975
Alaska	All public employees	Mediation. May voluntarily submit to binding arbitration. Special procedures for teachers similar to factfinding panel.	Employees divided into three categories Group 1: No right to strike. Group 2: May strike after mediation. Court may enjoin strike for health safety or welfare of public. Group 3: unlimited right to strike failing mediation.	1970* 0	5
Hawaii	All public employees	Mediation. Factfinding. May submit dispute to binding arbitration 30 days after declared impasse.	Must exhaust impasse procedures. Illegal if unfair labor practice. Must give 10 days notice to board and employer. Must take place more than 60 days after fact finding report made public. Board may enjoin strike if it endangers health or safety of public.	1970 1	7**
Minnesota	All public employees	Mediation. May submit the dispute to binding arbitration.	All but essential employees may strike if employer refuses to submit to binding arbitration or refuses to implement an arbitration award.	1971 5	12**

State	Coverage	Impasse Procedures	Limits on Strike	Incidence of Strikes from 1958 to	Incidence of Strikes from passage date to 1975
Montana	Public health nurses. Even in face of specific denial(1971) of right to strike for teachers PERC courts have said strikes are leagal .		Must give 30 days notice to employer. Illegal if there is another nurses' strike within 150 mile radius.	1971 2	7
Oregon	All public workers except police, firemen, court employees, guards at prisons and mental hospitals.	Mediation. Factfinding. May submit dispute to binding arbitration at any time.	Must wait 30 days after factfinder report. Must give public employer and board 10 days written notice. Strike may not occur if parties previously agreed to binding arbitration. Court may enjoin strike if it threatens or endangers health, safety or welfare of the public.	1965 0	2
Pennsylvania	All public workers except police, firemen, court employees, guards at prisons and mental hospitals.	Mediation. Factfinding. May submit to binding arbitration if factfinding report rejected.	Must exhaust empasse procedures before striking. Court may enjoin strike if it is danger or threat to health, safety or welfare of the public.	1969 72	262[24]

State	Coverage	Impasse Procedures	Limits on Strike	Incidence of Strikes from 1958 to	Incidence of Strikes from passage date to 1975
Vermont	Municipal workers Provisions unclear for teachers, but they enjoy de facto right to strike by non issuance of injunctions.	Mediation. Factfinding. May submit to binding arbitration at any time.	Must wait 30 days after factfinder issues report. Strike may not occur if parties previously agreed to binding arbitration. Court may enjoin strike if it endangers health, safety. or welfare of the public.	1968 0	1
Wisconsin	Covers teachers conditionally.	Mediation. Factfinding. Binding Arbitration.	All Impasse procedures must be exhausted. Strike permission for teachers only if employer refuses to go to binding arbitration.	1975 106	Right to Strike enacted in 1973

---

* indicates year of passage of right to strike law in each instance.
** includes all strikes by public employees.

[22]Aboud. p. 31.

[23]Public Service Research Council. Collective Bargaining and Striking. Appendix.

[24]Jones Report. p. 27.

public welfare: others may find teacher strikes interminably tolerable. Hawaii's inclusion of the term "health and safety" is decidedly less vague than the "welfare" standard applied by most states. Alaska has distinguished among three groups of employees based on the essentiality of service. Since a court must enjoin the most essential group from striking and may never enjoin the least essential group Alasks has, at least, limited the groups of employees to who the vague injunction application standards apply. However, teachers are included in group 2 and are subject to these vague standards.

Secondly, it is apparent that because they have gained the right to strike it does not follow that employees will use that right.[25] In Alaska, Hawaii, Montana, and Vermont the adoption of a strike permit has not generated a rash of strikes. In Wisconsin there was considerable strike activity through 1975. Although Wisconsin is generally credited with being the first state to enact collective bargaining legislation for public workers the right to strike was not granted until January of 1978. Only in Pennsylvania has there been a rise in strike activity after the right to strike legislation developed. Still, that fact in itself is not necessarily conclusive, since of the eight states, only Pennsylvania experienced a crescendo of strikes immediately preceeding the passage of its laws. In addition, upon examination of the strike pattern following legislation in Pennsylvania it appears that many strikes occurred before the parties had exhausted the required im-

---

[25]Aboud. p. 20.

passe procedures.[26] This fact in itself does not seem to be startling inasmuch as private employees are not subject to any such restraints. However, we believe that the significance of this pattern, combined with a general rise in strike activity, carries implications concerning the design of the law which we will address further in Chapter 4, The Pennsylvania Experience.

The fact that gaining the right to strike does not guarantee its use has important political implications. Legislation is made in a political environment and tends to be a conservative process. Most legislators take into account the opinions of both labor and management as well as the current political-social milieu extant when making labor policy. In the course of policy making, legislators strive for compromises between interested parties on major issues where the parties' opinions conflict. Thus, labor and management must assign their own priorities to different aspects of bargaining legislation because inclusion of one desired provision may be paid for by the exclusion of a second desired provision. Consequently, at a time when several labor relations issues are being proposed for enactment in a state that has experienced only moderate strike activity it might be in the interest of employer groups to agree to the right to strike for other possible considerations such as broadened management rights or narrower scope of of bargaining provisions.

---

[26]Harold Alderfer. "Pennsylvania School Strikes." Labor Law Journal 23: 1972. p. 41 - 50.

Legislative Trends

Currently, other states are moving closer to the collective bargaining-strike model in public employment. Michigan, although without specific legislation, grants limited access to the labor injunction as a means of restraining public employee work stoppages. In spite of an existing anti-strike provision embodied in the Hutchinson Act, in Michigan there has been a de facto right to strike in recent years. Chairman of the House Labor Committee, Perry Bullard has recently commented favorably on a right to strike proposal for Michigan's public employees. According to Bullard strikes are necessary in the collective bargaining situation not as ends in themselves but, rather, they are designed to create an atmosphere of urgency and seriousness to facilitate settlements and finalize their outcomes within the immediate control of both parties.[27] He goes on to speak to a growing trend in the courts to eliminate a double standard -- that the proposal would simply give public workers the same legal status as workers in private industry who have been bound by either federal or state labor laws.

In New Jersey legislation enacted in 1968 (Chapter 303) mandated collective bargaining for all public employees. Since the 1968 legislation a number of bills concerning public sector labor relations have been passed or proposed. In much of the testimony relating to these bills a persistent call for the right to strike has emerged on the part

---

[27]Perry Bullard. "Rationale for Public Employee Right to Strike." Legislative bulletin on HB 4645, Michigan Labor Committee.

of public employee representatives. Interestingly enough the New Jersey School Boards Association has supported a bill calling for discontinuation of jailings for teachers who violate court orders enjoining strikes.[28] In 1974 the New Jersey Education Association supported S-1120, a measure providing that no imprisonment be imposed on a public employee for an initial conviction for contempt of court in violating a back to work order.

These latest developments in employer attitude not only demonstrates a fundamental shift in political alignment but are also indicative of the acknowledgement of three important facts. 1. The legal prohibition of strikes or strike sanctions does not prevent workers from disrupting service.[29] 2. That penalties assessed against them do not deter them from concerted action.[30] and 3. That the system of prescribed penalties that necessarily flow from a strike ban or violation of an ex parte injunction impose severe procedural strain on the organization as an aftermath to the resolution of a conflict.[31]

---

[28]New Jersey School Boards Assoc. Public School Employee Strike Penalties. S-1151 (Dodd) Trenton, New Jersey. p. 1.

[29]For a complete discussion on the effectiveness of strike sanctions see Grodin and Wollett's review of the 1969-72 California experience in Labor Relations and Social Problems, p.246 -249.

[30]Kheel. 67: 931 - 942. p. 932.

[31]Patrick Halligan studied the injunctive process in public employment and concluded that "The practical problems of enforcing injunctions are great." He suggested as an alternative, the legalization of the strike. "Enjoining Public Employees' Strikes: Dealing with Recalcitrant Defendents." De Paul Law Review 19: 298 - 317, 1969.

Early in 1978 a bill was pre-filed for introduction in the 1978 Session which would amend New Jersey's existing P.L. 1968, c. 303. Assembly bill No. 455 is sponsored by Assemblyman Chris Jackman of Hudson County and is actively supported by both the New Jersey Education Association, its authors, the American Federation of Teachers of New Jersey, and various other labor groups in the state.

A-455 would give public employees the minimal elements of due process by granting the right to withhold services under specific circumstances. The proposal's stated delimitations to strike activity include situations incurring a "clear and present danger to public health and safety" and failure to "reasonably utilize" the prescribed impasse procedure provided for in section 6, of P.L. 1941, c 100. According to the proposal an injunction may only be issued for the specific act or acts that pose the clear and present canger or in the case of failure to comply with impasse resolution procedure only until the said act or acts demonstrating failure to comply is fulfilled.

Any injunction may be issued " ...only on the basis of findings of fact made by the court or judges after due notice and hearing in open court prior to the issuance of such restraining order or injunction."[32]

A-455 has been developed in an effort to ensure to teacher groups in New Jersey a forum for due process and thereby produce incentives to resolve interest disputes.[33]

---

[32]Assembly 455. Chris Jackman (Hudson), sponsor. 1978 Session.

[33]New Jersey Education Assoc. legislative bulletin, no. 9, 3/28/78.

Chapter III

POSITIONS ANALYSIS

Introduction

Because the decision to grant a limited right to strike to teachers such as that proposed by supporters of Assembly 455 is a political one, we felt that it would be helpful to include an analysis of positions taken on the question by various interested parties and the rationale they have developed to support their stance. In addition, since the neighboring states of New Jersey and Pennsylvania have legislation representing both sides of the issue, we felt that an attempt should be made to delineate the extent and substance of the differences in viewpoint of the lobby groups in the two states. Much of the information in this section was gleaned from reading the statements, reports, studies and position papers which have been presented at legislative hearings or to study commissions on public employee relations bills in both states since the time that public employee collective bargaining legislation began to be seriously contemplated -- a period of a little more than ten years.

Although collective bargaining bills were enacted into law in both New Jersey and Pennsylvania around the turn of the decade, and although both states had had no previous legislation permitting collective bargaining in the public sector,

it is important to note that Pennsylvania had a law, the Public Employe Act of 1947 (P.L. 1183), which contained an anti-strike provision carrying severe mandatory penalties, whereas New Jersey has never had a law against school employee strikes, nor does the New Jersey State Constitution forbid strikes by teachers. Penalties arising out of illegal strikes in New Jersey result from refusing to obey court injunctions obtained by school boards; it is the courts that determine and impose sanctions on representative teachers and their union rather than, as was the case in Pennsylvania, the school boards themselves that were required to administer to all striking teachers the harsh punishment decreed in the statute.

Against the Right to Strike

In both states, school boards and central office personnel, in general, have tended to argue against granting to teachers a limited right to strike for the following reasons:

1. Public employees have job protection, tenure, accumulated sick leave, mandated minimum salaries with mandated increments, sabbatical leave, retirement systems, and other protections not available to the employee in the private sector.[34]

2. Public employees, by accepting public employment, forego such forbidden actions as the strike.[35]

---

[34]Testimony of John C. Snyder, President of Pennsylvania School Boards Association, as recorded in Penna. Senate State Govt. Comm. Hearings, Aug 21-Aug 22, 1969 Re: SB 518, SB 1021, & HB 1443 Public Employee Relations Bills. Vol. 1, p. 59-60. (Hereafter referred to as Penna. Hearings)

[35]Fred M. Heddinger, President of Pennsylvania School Boards Association in statement submitted to State Govt. Comm. of House of Representatives of Penna. Legislature Oct 30, 1968.

3. The possible loss of market for a product and loss of profit, which factors tend to compel both sides toward impasse resolution, do not exist, and no equally compelling factors apply to public employment.[36]

4. In disputes in which a balance between the public interest and the employee's interest cannot be attained, the public interest must come first.[37]

5. Strikes in the public school sector can have long-term negative effects on educational programs and on rapport between teachers and children, between teachers and principals, and between the school and the community.[38,39]

In the Pennsylvania situation prior to the passage of Act 195 (collective bargaining with limited right to strike), however, some school boards and chief school administrators who were directly involved in the turmoil which resulted from a number of illegal strikes and the statutory consequences to teachers, found themselves unable to accept or support traditional public sector viewpoints. Beverly Wendt, a member of

---

[36]Heddinger, Oct 30, 1968.

[37]Albert F. Unger, Pennsylvania School Boards Association in transcript of statement made in hearings prior to issuance of [The Jones] Report of the Governor's Study Commission on Public Employe Relations. (Mimeographed)

[38]Ed Kiess, Executive Director of New Jersey Association of Elementary School Administrators in statement as recorded in "Public Hearing Before Assembly Labor Committee on Assembly, No. 553." Held at Trenton, NJ, May 15, 1978. (Mimeographed). (Hereafter referred to as Assembly Labor Comm. Hearings on A-553) p. 26.

[39]James Moran, Executive Director of New Jersey Association of School Administrators as recorded in Assembly Labor Comm. Hearings on A-553, p. 19.

the Edgewood Board of School Directors and the Allegheny Board of School Directors, speaking in her capacity as Secretary of the Educational Council of School Districts of Allegheny County (the research and legislative committee for all Allegheny County school boards and chief school officers exclusive of Pittsburgh), argued:

> Though the public employer lacks the power of the private employer, collective bargaining simply will not work unless the public employee has the power to exert pressure upon the public employer...When we asked school directors to indicate their "druthers", we found general agreement that the conditional right to strike is the better choice [over arbitration]. It seems the only way to protect both the school child and the taxpayer and give the teachers' organizations some means of seeking fair wages.[40]

Dr. James Burk, Superintendent of Fox Chapel Area School District of Pittsburgh, in arguing for collective bargaining legislation with a right to strike provision, explained:

> Our keen interest in this legislation was developed as a result of a teacher work stoppage in late May and a legal responsibility to abide by the 1947 Anti-Strike Law. Although the provisions of the law were applied, the Board did see the great inequity which existed and severity of the penalties which were required.[41]

This unusual alignment of management representatives with employee interest groups undoubtedly helped to influence the legislators. Act 195 (P.L. 563), when passed on July 23, 1970, contained not only a section permitting teachers to

---

[40] Penna. Hearings, vol. 2, p. 25.

[41] Penna. Hearings, vol. 2, p. 52.

strike upon the unsuccessful conclusion of specified efforts at impasse resolution, but also providing for repeal of the Anti-Strike Law of 1947, "and any penalties or other limitations currently in force or presently pending against any public employes, shall be deemed null and void."[42]

Today, although the Pennsylvania School Boards Association characterized strikes as "distressing", a reflection of "disregard of public welfare" and "a misuse of power by employe unions",[43] it has adopted a stance of acceptance of Act 195 while deploring the numbers of strikes and questioning certain aspects of the Act's administration. PSBA's Fred Heddinger, appearing before the Special Legislative Committee on Act 195 in 1973, said, "...Act 195 is overall a well designed collective bargaining law..."[44] At the hearings for the second intensive investigation into the operation of the law since its passage, PSBA's Albert Unger remarked, "...we've always had trouble with the provision of granting the right to strike in the impasse procedure. We recognize in a practical sense that it's here, and we're living with it."[45]

---

[42]Act 1970 July 23 P.L. 563 No 195 2201 (43 P.S. 1101.2201) Purdon's Penna. Statutes Annotated Title 43 Labor supplement. St. Paul, Minn.: West Publishing Company, 1964. p.299.

[43]Act 195 (223 page analysis of the law). Pennsylvania School Boards Association, Inc., 1976. p. 7.

[44]Fred M. Heddinger, Executive Director of Pennsylvania School Boards Association. "Statement by Pennsylvania School Boards Association Before Special Legislative Committee on Act 195." Presented at Harrisburg, PA, May 17, 1973. (Mimeographed)

[45]Unger transcript.

In New Jersey at the present time, the New Jersey School Boards Association has begun to speak out in favor of eliminating the jailing of striking teachers as an anti-strike penalty:

> The incarceration of striking teachers and other public school employees is an extreme step for which there is little public support. Jail sentences have been imposed infrequently; their effect has often been to exacerbate, rather than diffuse, the labor dispute which gave rise to the strike.[46]

The New Jersey School Boards Association supports the substitution of mandated fines for individual violators and employee organizations. Its position statement points out that jailing school employees who defy court orders does not appear to deter strikes, penalizes students who have already suffered disruptions to their educational program by insuring the continued absense of their teachers, produces a psychological shock for young students who become aware of the jailing of a respected authority figure, aggravates tensions in the community, and frustrates the school board's aim of working in concert with staff to provide effective education for children.[47] This cannot be construed, however, as in any degree modifying the NJSBA's strong opposition to any legislation that would grant the right to strike to public employees or have the effect

---

[46]Lawrence S. Schwartz, President of New Jersey School Boards Association. "Testimony presented to the Assembly Labor Committee." Presented at Trenton, NJ, May 15, 1978. (Mimeographed, 5/12/78)

[47]"Position Statement S-1151 (Dodd) Public School Employee Strike Penalties." Trenton, NJ: New Jersey School Boards Association, undated. (Mimeographed)

of encouraging public employee strikes. Citing Pennsylvania as a clear example of increased strike activity as a result of the right to strike, the NJSBA points out that Pennsylvania, with less than five percent of the country's population, has suffered thirty percent of the nation's teacher strikes in recent years. The NJSBA concludes:

> New Jersey had 36 teacher strikes in the last three academic years. The Association deplores these disruptions in the state's educational program and will oppose any legislative attempts to decrease the sanctions available to deter strikes or otherwise encourage strikes and work stoppages by public employees[48]

In Favor of the Right to Strike

Those who argue in favor of legislation granting public employees the right to strike point out that denial by government of the right to strike regardless of justification carries with it the obligation to ensure working conditions which would make strikes unnecessary and unwarranted. The American Bar Association's Committee on Labor Relations of Government Employees concluded that to depend solely on a hoped-for beneficent attitude of public administrators was "too idealistic."[49] The contrast is drawn between dedicated public employees who prefer not to strike, forced by marketplace costs to seek salary increases, frustrated by bad faith bargaining with

---

[48]"Legislative Goals." Trenton, NJ: New Jersey School Boards Association, 1979. (Mimeographed)

[49]Penna. Hearings, vol. 1, p. 161.

employers used to unilateral decision making without regard for the employee's ability to survive and to provide for his family.[50]

The right to strike is defended as a stimulant to bargaining. The Working Conditions Committee Report to the 1977 Delegate Assembly of the New Jersey Education Association (Jan. 22, 1977) asserts that teachers, as other American citizens, should have the right to withhold services under certain conditions, that the objective is to stimulate bargaining, and that negotiated settlements are preferable to imposed settlements. This commitment was reaffirmed as top priority in the 1979 Working Conditions Committee Report (Sept. 15, 1979):

> The right to strike is too fundamental to water down...NJEA should not be deterred by present public or legislative attitudes on the issue because opinions can be changed...The length of time or the difficulty it may take to achieve an NJEA goal such as the right to strike should not be the determining factor in whether the goal is correct.

It is NJEA's position that striking against an employer -- the right to withhold services -- is a basic right.[51] In the Pennsylvania hearings held ten years ago, these same themes predominate. Harry Boyer, President of the Pennsylvania AFL-CIO, argued that the "...right to strike is an essential ingredient toward the promotion of settlements of disputes

---

[50]Harry Boyer, President of Pennsylvania AFL-CIO, in Penna. Hearings, vol. 1, p. 99-100.

[51]"Impasse Resolution -- A Priority." No. 4. Trenton, NJ: New Jersey Education Association, 2/1/78. (Mimeographed)

without strikes. If an employer,...private or public..., has the right...to deny demands..., we believe it is critically important that such employees should have the right to withhold services. It is only when both rights are present at the bargaining table and only when both parties know these rights exist that meaningful good faith bargaining can proceed and amicable settlements issue from such efforts."[52]

It is not, says NJEA, school boards negotiating in good faith who are involved in teacher strikes. Strikes occur in districts where school boards are not negotiating in the spirit of the State collective bargaining law. The point is made that, in the absence of the possibility of a strike, some board members are not motivated to negotiate.[53] Balance, justice and "fair play" in the negotiating process are guaranteed by granting teachers the right to strike. The "equality of power at the bargaining table" view was supported in 1972 by a panel of three judges from the Appellate Division of New Jersey's Superior Court who, in affirming the convictions of 16 teachers for violating court injunctions, wrote in their decision:

> It is unfortunate that resort must be had to contempt of court procedure in this type of situation. Jailing teachers is not the answer to school strikes.

---

[52] Boyer, Penna. Hearings.

[53] Bertolino, Jack J. "Jersey Justice -- Time For A Change." Trenton, NJ: New Jersey Education Association, November 1973. (Mimeographed)

> Public employees have the right to bargain collectively as to the terms and conditions of their employment but cannot do so on equal terms with their employment unit since they have no means of negotiating from a position of strength."[54]

Even Lawrence Schwartz, testifying as NJSBA President in the May 1978 Assembly Labor Committee hearings on A-553, when asked whether most New Jersey school strikes were of such short duration because of legal action taken by school boards to stop them, admitted:

> I think in most cases the school boards did not take any legal action to stop the strikes. <u>But, the strikes put pressure on both sides to bring it to a speedy conclusion</u>."[55] (italics added)

A common concern expressed by proponents of the right to strike is that of management-provoked strikes:

> When a board says that it will simply strip away, unilaterally, several hard-won provisions of a contract,...you have a situation which can only be called 'management provoked strike.'[56]

Such is the view of James Auerbach of the American Federation of Teachers, who concluded, "...prohibiting strikes legislatively, or imposing heavy fines, will never prevent strikes; only fair bargaining at the table will eliminate strikes."

---

[54]Mark A. Sullivan, Leon Leonard, and Lawrence A. Carton, Jr., cited in "Testimony submitted on behalf of the New Jersey Education Association, presented by Arthur J. Lehrhaupt, NJEA Vice President, Jack J. Bertolino, Director of Field Service, and Frederick L. Hipp, Executive Director, before the N.J. Senate Conference and Coordinating Committee and the N.J. Assembly Labor Committee regarding Senate Bill No. 1087 and Senate Bill No. 1120 on May 7, 1974." Trenton, NJ: New Jersey Education Association, 5/7/74. (Mimeographed)

[55]Assembly Labor Comm. Hearings on A-553, p. 38.

[56]Assembly Labor Comm. Hearings on A-553, p. 18.

New Jersey teachers groups have long argued that, when forced into untenable situations that result in strike action, they are then deprived of day-in-court proceedings which would allow them the opportunity to justify their actions.[57] Ex parte injunctions against striking New Jersey teachers are automatically issued regardless of fault. In Pennsylvania, where strikes are legal, teacher groups complain that boards can wait until "a clear and present danger" -- the inability to make up the required 180 days, for example -- is approaching, and then go to court for an injunction. Pennsylvania teachers groups feel that boards should be required to show the court "clean hands" -- i.e., that they have no been responsible for failure to arrive at an ultimate satisfactory solution.[58]

Strike Ban Effectiveness

Whatever the positions developed from the facts, there seems to be general agreement that prohibiting strikes does not prevent them. Jeffrey Tener, Chairman of the New Jersey Public Employment Relations Commission, has testified that strikes in New Jersey education are short and minimally disruptive, and that they are probably not deterred by penalties. However, he goes on to characterize the jailing of

---

[57] Lehrhaupt testimony on behalf of NJEA, May 7, 1974.

[58] Angle, Jacque D. "Testimony Before the Governor's Study Commission on Public Employee Relations." Presented on April 5, 1977. Harrisburg, PA: Pennsylvania State Education Association. p. 14.

teachers as "...an act almost of desperation and one that probably doesn't serve as a particularly effective deterrent, or at least a guarantee against teachers' strikes."[59] As reasons for strikes, Mr. Tener lists money issues, the attempt by a board to take back certain things that have previously been negotiated -- "...a predictable strike-causing action on the part of the public employer,"[60] and situations in which the parties' relationships are not good over a period of time with stress, a power struggle, or insecurity and instability leading to teacher's strikes. James Auerbach of the AFL-CIO[61] and Mark Neimeiser of the American Federation of State, County and Municipal Employees, AFL-CIO,[62] contend that, in states where strikes are directly prohibited, there is actually a higher percentage of strikes than in a state like New Jersey. Says Neimeiser:

> Strike penalties have become unenforceable... Although there were strict prohibitions against the right to strike, employees who felt they were wronged, or felt some injustice, still went out, survived those penalties...[63]

---

[59]Assembly Labor Comm. Hearings on A-553, p. 5.

[60]Assembly Labor Comm. Hearings on A-553, p. 6.

[61]Assembly Labor Comm. Hearings on A-553, p. 18.

[62]Assembly Labor Comm. Hearings on A-553, p. 28. See also supporting charts and graphs of statistics in appendix, p. 25x-33x.

[63]Assembly Labor Comm. Hearings on A-553, p. 29.

Pennsylvania's Lt. Governor Kline has said:

> As distressing as public employe strikes are, I have serious reservations about changing the limited right to strike provisions of Act 195. To go back to the absolute prohibition of public employe strikes that existed before would not guarantee an end to such strikes.[64]

And, in the words of Richard Kirschner of District Council 33 of the American Federation of State-County-Municipal Employees, spoken ten years ago in support of the limited right to strike for Pennsylvania teachers:

> You cannot enact, by any piece of legislation, anything that will ensure to yourselves or to the public at large a guarantee or insurance against the right to strike by public employees. Times have changed.[65]

The Public Service Research Council, described by Roman K. Rice III, its Legislative Director, as the largest citizens' lobby in the country, is concerned exclusively with public sector labor policy. On the question of whether strikes can be prevented, Mr. Rice has stated:

> ...the public employee unions have not bothered with the legality of the situation. By and large, they have simply made the decision to collectively withhold their services wherever advantageous to their cause -- i.e., they have struck illegally and have largely been allowed to strike with impunity.[66]

---

[64] Lt. Governor Kline, quoted in Angle testimony, April 5, 1977. p. 10.

[65] Penna. Hearings, vol. 2, p. 135-136.

[66] Public Service Research Council. Personal correspondence between Roman K. Rice, Director of Legislative Affairs, and the authors. Oct. 19, 1979.

Chapter IV

THE PENNSYLVANIA EXPERIENCE

The Public Service Research Council, in the course of actively collecting and interpreting statistics to prepare its "Legislative Analyses" and testimony against compulsory binding arbitration, agency shop for public employee unions, and enactment of collective bargaining laws in the public sector for presentation at hearings in every state, raises an important issue about granting the right to strike to teachers. Mr. Rice, who says that the Public Service Research Council would vigorously oppose such a legislative change as an "unjustified intrusion on the taxpaying public," concludes:

> Judging from the experience in Pennsylvania, which has seen a great increase in the number of strikes since right to strike legislation was passed in 1970, I would expect...that there would be a sizeable increase in the incidence and severity of strikes to the detriment of the voting and taxpaying public of the State of New Jersey.[67]

The fact, however, is that Pennsylvania is an anomaly among states which have granted the limited right to strike to public employees. There is no evidence whatsoever that New Jersey would suffer the same unfortunate proliferation of public

---

[67]Rice, personal correspondence, Oct. 19, 1979.

sector strikes if New Jersey teachers were granted a limited right to strike by legislation such as that proposed by Assembly Speaker Chris Jackman (D - Hudson) in bill A-455.

Because the strike record under Pennsylvania's Act 195 is so unusual, it is worth examining the information that is available to attempt to delineate the specific difficulties which are inherent in the Pennsylvania situation. It is important to realize, first of all, that Pennsylvania has always had more public sector strikes than has New Jersey. This was true even before collective bargaining laws were passed in either state. Senator Richard C. Frame, Chairman of the Pennsylvania State Senate Government Committee, in his statement opening the two days of hearings in 1969 which resulted in 400 pages of public testimony on proposed public employee relations bills, related the pressing need to pass such a bill to the "...problems of some seven or eight districts in western Pennsylvania and the urgency of the situation in regard to those districts."[68] His reference was to only those school districts which had both struck in violation of the Public Employe Act of 1947 (P.L. 1183) and in which anti-strike penalties had subsequently been invoked, although the legislators were aware that there had been many other teacher work stoppages in that year.

---

[68] Penna. Hearings, vol. 1, p. 1.

Although Pennsylvania, with its limited right to strike legislation, has experienced a far greater incidence of teacher strikes in absolute numbers than has New Jersey with its history of ex parte injunctions against public sector strikes, the strike statistics for the two states show remarkably similar patterns:[69]

1. Pennsylvania experienced 33% of all teacher strikes between 1970 and 1979 within the first three years after passage of Act 195. In New Jersey, 38% of all teacher strikes between 1968 and 1978 occurred within three years of the passage of C. 303.

2. Both states experienced a tremendous upsurge of strike activity in 1975-76 and 1976-77, with 31% of all teacher strikes in Pennsylvania between passage of Act 195 and 1979 occurring in those two years and 32% of all teacher strikes in New Jersey between enactment of C. 303 and 1978 occurring in those two years.

3. Both states experienced a considerable decline from previous levels of strike activity in 1977-78.

This parallelism strongly suggests that the root causes of strike activity in the two states lie elsewhere than in the mere presence or absence of a statutory right to strike and may more closely relate to generalized economic and labor considerations. In their study of the incidence of strikes in

---

[69]Computations are based on statistics on the frequency of teacher strikes as recorded in Teacher Strike Report 1978-79 Pennsylvania Public Schools, Pennsylvania Department of Education, June 1979; and "Teacher Strike Activity 1968-78", compiled by New Jersey School Boards Association and included in Assembly Labor Comm. Hearings on A-553.

the local government, noneducation sector, Burton and Krider concluded:

> Environmental factors are largely beyond the control of public policy, while those elements that can be controlled by public policy seem to have little impact on strikes. For example, the statutory prohibition on strikes has little apparent impact on the incidence of strikes, nor does the enactment of a law either prohibiting or encouraging collective bargaining by public employees appear to affect materially the number of local government strikes.[70]

It is entirely possible that the large proportion of strikes in the first three years of collective bargaining resulted from lack of familiarity with and experience under the law, which led to misunderstandings and miscalculations on both sides. The sharp increase which began in 1975-76 may have been precipitated in New Jersey by passage of the Public Education Act of 1975 (C. 212) requiring budget "caps", while Pennsylvania's school boards were rejecting fact-finder's recommendations in that year and the following in part because of "a deficit financing as a result of no increase in state support of education"[71] for three straight years.

One serious question remains. Given a labor climate and economic conditions which predispose to increased strike activity, what conditions exist in Pennsylvania which have led

---

[70] Burton, John F. and Krider, Charles E. The Incidence of Strikes in Public Employment, General Series Reprint 304, p. 171. Washington, D.C.: The Brookings Institution, 1975.

[71] Angle testimony, April 5, 1977. p.4.

to such a large number of public sector strikes? One possible explanation lies in the lack of definition of scope of bargaining in Act 195. In a legal analysis of the impact of the act on the Pittsburgh dispute of 1971, it was pointed out that:

> It can be confidently stated that no other single issue has more exacerbated teacher-board collective bargaining relations than has the interpretation and application of section 702 [covering scope of bargaining] of the Act... [which] ...specifically [exempts] nothing from the scope of bargaining, yet [makes] permissive the discussion of matters of inherent managerial policy.[72]

The author explains that most of the bargaining time is dissipated in debating what should be bargainable. Moreover, since permissive subjects of bargaining must be withdrawn prior to submitting the issues to mediation if one of the parties has the legal right and the expressed wish not to bargain on those items, efforts to move negotiations forward through mediation and fact finding as required by the law are often blocked:

> Scope determinations have become more critical in the public sector because of the wide use of fact finding and arbitration. The determination of what can come before a factfinder produces a sharp focus on the importance of scope issues. If it is decided that an issue is a mandatory subject of bargaining, then it can come before a factfinder; if not, it generally should not come before a factfinder.[73]

---

[72] Public Employe Relations Act and Pennsylvania Teachers. (1971) 10 Duquesne L. Rev. 77.

[73] Helsby, Robert D., Director, Public Employment Relations Services. "Scope of Bargaining Issues With Professional Units," Proceedings of the New York University Thirty-First Annual National Conference on Labor, ed. Richard Adelman, p. 287. New York: Matthew Bender, 1978.

The 200+ page book, Act 195, originally published by the Pennsylvania School Boards Association in 1971, instructs school board members that:

> The scope of bargaining is likely the most critical area of a collective bargaining agreement, especially public sector contracts. Errors in this area, which permit undue employee organization control, are almost impossible of subsequent adjustment or correction...A willingness on the part of a public employer to bargain over items suggested in Section 702 amounts to abandonment of responsibility for the public interest.[74]

It was precisely this unwillingness to negotiate rather than to "meet and discuss" which was recognized by board representatives in the testimony prior to Act 195's passage as primarily responsible for board-teacher conflict leading to illegal work stoppages.[75]

Since passage of Act 195, there have been two intensive investigations into the workings of its various provisions. The Joint House-Senate Committee in 1974 recognized the complexity of the issue of what is bargainable and what is not, especially in regard to professional employees and concluded, "...the committee believes, however, that case law should be allowed to develop in order to clarify this issue."[76]

---

[74] Act 195. Pennsylvania School Boards Association, Inc., 1976. p. 15-16.

[75] Penna. Hearings, p. 29.

[76] Angle testimony, April 5, 1977.

The Jones Commission Report,[77] issued in June 1978, referred to the balancing test enunciated by the Supreme Court in P.L.R.B. v. State College Area School District, 461 Pa. 494, 337 A. 2nd 262 (1975), which was to be used in scope of bargaining disputes to determine:

1. whether a matter weighed more heavily on employees' concerns about wages, hours and working conditions and was therefore not removed as a matter subject to good faith bargaining under section 701 simply because it touched on basic policy; or

2. whether it had a greater effect on the public employer's right to manage the political entity and was therefore subject to the requirements to meet and discuss upon request under Section 702.

The Commission recommended that the P.L.R.B., as the body with the most expertise and experience, should make the initial determination of bargainability, subject to court review. It noted that, although the Board could issue determinations on scope of bargaining under expedited procedures (Act 195, Article XIV), it had not chosen to do so. It was the recommenda- of the Commission that "consideration of scope of bargaining questions under an expedited procedure be mandatory in order that such issues are prevented from being the cause of an impasse in collective bargaining."[78] (italics added) Helsby,

---

[77] The Jones Report -- Governor's Study Commission on Public Employe Relations. Recommendations for Legislative and Administrative Change to the Public Sector Collective Bargaining Laws of Pennsylvania. June 1, 1978.

[78] The Jones Report, p. 19-20.

in his discussion of the innovative, flexible responses in the face of adverse and unfavorable scope determinations by parties who are mature in the collective bargaining process nevertheless underscores the necessity for an orderly procedure for determination of scope issues when parties become locked in confrontation which causes bargaining to bog down: "...one element is paramount -- the need for an expedited determination. Often the disputed subject of bargaining simply stalls negotiations until resolution is achieved. Thus, in the interest of the total process, a speedy determination must be effected so that the parties can get on with their negotiations."[79]

Additional shortcomings in impasse procedures are spelled out both in [The Jones] Report and in PSBA's book, Act 195. The P.L.R.B. and the Bureau of Mediation are distinctly separate and perform separate and discreet functions. This has led to a noticeable lack of efficiency in following required impasse procedures, particularly in moving from the mediation phase to the factfinding phase. The Bureau of Mediation has been confronted with an impossible number of impasse situations, a second problem. David Kanes, Director of the Bureau,[80] reports a high of 917 notices of dispute filed in 1975, and points out that the staff consisted of the original eleven mediators until

---

[79]Helsby, "Scope of Bargaining", p. 284.

[80]Kanes, David, Director of Bureau of Mediation. "The Limited Right To Strike: Experience in Pennsylvania," Proceedings of the New York University Thirty-First Annual National Conference on Labor, ed. Richard Adelman. New York: Matthew Bender, 1978. p. 311-312.

October of 1974 when additional mediators were added. It is Mr. Kanes's opinion that the lack of sufficient staff no doubt had a bearing on the effectiveness of the mediation effort and therefore on the number of disputes that were not settled without strikes. [The Jones] Report, while recommending that the P.L.R.B. and the Bureau of Mediation be reorganized into a single agency and that the staff be increased in number, with training in public sector labor relations to be provided on a continuous basis, saw as the most serious fault in the present system that it has been susceptible to political influence, thus hindering the effectiveness of mediation and factfinding efforts.[81]

The Jones Commission, established on Dec. 9, 1976, held 13 days of public hearings in six Pennsylvania cities and received transcripts, testimony and letters from all interested parties. Over 100 witnesses presented more than 2000 pages of testimony regarding public sector labor relations. The Commission also met with experienced arbitrators and collective bargaining practitioners from around the country and with members of the Commonwealth Administration and Legislature. Seven months of research was followed by detailed deliberations held between January and May, 1978. The Commission agreed to strive for a consensus among its nine members on each issue.

The Commission recommended that the right to strike be retained. It recommended the following changes:

---

[81] [The Jones] Report, p. 13.

1. that five days written notice of intent to strike be required

2. that public employee unions be required to take positive action to end wildcat strikes

3. that rescheduling lost days be a permissive subject of bargaining to provide both boards and teachers with an economic incentive to end a strike (teachers would lose pay and boards would lose state subsidies for the days of a strike unless the board and teachers reached an agreement to reschedule the lost days)

4. that parties would be required to bargain on the adoption of alternative impasse procedures with the clear understanding that if they fail to agree on an alternative, employes retain the right to strike.

The Commission elaborated, "The maintenance of the strike option ensures meaningful good faith bargaining insofar as the best deterrent to a strike is the very threat of one."[82]

This support for retaining the limited right to strike in Pennsylvania seems to be broad-based and secure despite the high visibility and degree of conflict. The reason for this support may perhaps be best summed up by the perception of David Kanes of the Pennsylvania Bureau of Mediation:

> The well-nigh unanimous opinion of the staff of the Bureau of Mediation is that the limited right to strike provision helps make collective bargaining work by bringing a sense of reality to the process. The right to strike is a two-edged sword and it can serve as a deterrent to unrealistic demands. Those who misuse this weapon often find that it backfires in a way they are not likely to forget.[83]

---

[82] The Jones Report, p. 31. [83] Kanes, David, p. 309.

BIBLIOGRAPHY

Books, Articles and Study Commission Reports

Aboud, Antone and Grace Aboud. The Right to Strike in Public Employment. New York: New York School of Labor Relations, Cornell University. 1974.

Act 195. Pennsylvania School Boards Association, Inc., 1976.

Alderfer, Harold. "Pennsylvania School Strikes." Labor Law Journal 23: 41 - 50. 1972.

Anderson, Arvid. "Strikes and Impasse Resolutions in Public Employment." Michigan Law Review 67: 943 - 970. 1969.

Burton, John F. and Charles Krider. "The Role and Consequences of Strikes by Public Employees." Yale Law Journal 79: no 3, 424 - 432. 1970.

_____. The Incidence of STrikes in Public Employment, General Series Reprint 304. Washington D.C.: The Brookings Institute. 1975.

Bureau of Labor Statistics. Labor Yearbook. 1978.

Bullard, Perry. "Rationale for Public Employee Right to Strike." Legislative bulletin on HB 4645, Michigan Labor Committee.

Edwards, B. "Labor Relations in the Public Sector." Duquesne Law Review 10: 358 - 364. 1972.

Fusilier, H.L. and Laurence Steinmetz. "Public Employee Strikes: An Operational Solution." Quarterly Review of Economics and Business 7: 29 - 36. 1967.

Grodin, Joseph R. and Donald Wollett. Labor Relations and Social Problems. Washington, D.C.: Bureau of National Affairs. 1975.

Grodin, Joseph R. "Either-or Arbitration for Public Employee Disputes." Industrial Relations. May, 1972.

Halligan, Patrick D. "Enjoining Public Employee Strikes: Dealing With Recalcitrant Defendents." De Paul Law Review 19: 298 - 317. 1969.

Hanslowe, Kurt. The Emerging Law of Labor Relations in Public Employment. Ithica, N.Y.: New York School of Industrial and Labor Relations, Cornell University. 1967.

Harris, Lewis and Associates. The Harris Survey Yearbook of Public Opinion. New York: Lewis Harris and Associates, Inc., 1971.

Helsby, Robert D. "Scope of Bargaining Issues With Professional Units." Proceedings of the New York University Thirty-first Annual National Conference on Labor, ed. Richard Adelman. New York: Matthew Bender. 1978.

Jones Report -- Governor's Study Commission on Public Employe Relations. Recommendations for Legislative and Administrative Change to the Public Sector Collective Bargaining Laws of Pennsylvania. June 1, 1978.

Kanes, David. "The Limited Right to Strike: Experience in Pennsylvania." Proceedings of the New York University Thirty-first Annual National Conference on Labor, ed. Richard Adelman. New York: Matthew Bender. 1978.

Kheel, Theodore. "Strikes and Public Employment." Michigan Law Review 67: 931 - 942. 1969.

_____. "Resolving Deadlocks Without Banning Strikes." Monthly Labor Review 92: 62 - 76. 1969.

Lisella, Carmine. Interest Arbitration in Education: Is Impasse Arbitration Compatible with Collective Bargaining? unpublished clinical project submitted in partial fulfillment of course requirements for TA 6018, Staff Personnel Administration, Professor E. Reutter, Teachers College, Fall, 1978.

_____. Interest Arbitration: A Case Study. unpublished clinical project submitted in partial fulfillment of course requirements for TA 5030, Labor Relations in Education, Professor William Shine, Teachers College, Spring 1978.

McAvoy, Joan. "Binding Interest Arbitration in the Public Sector: Is it Constitutional?" William and Mary Law Review, Summer, 1977.

Pennsylvania Senate State Government Hearings, August 21 - August 22, 1969 Re: SB 518, SB 1021, and HB 1443 Public Employe Relations Bills. 2 vols.

Petro, Sylvester. "Sovereignty and Compulsory Public Sector Bargaining." Wake Forest Law Review (Monogram) Vol. 10, no. 1. March, 1974.

"Public Employe Relations Act and Pennsylvania Teachers." Duquesne Law Review 10: 77, 1971.

Public Service Research Council. Public Sector Bargaining and Strikes. Vienna, Virginia: Public Service Research Council Inc., 1978.

Purdon's Pennsylvania Statutes Annotated Title 43 Labor, supplement. St. Paul, Minnesota: West Publishing Company, 1964.

Ray, Jack. "The Compatability of Public Employment Collective Bargaining With Public Interests." Labor Law Journal 18: 752 - 755. 1967.

Saso, Carmen D. Coping with Public Employee Strikes. Chicago: Public Personnel Association, 1970.

Schwartz, Patricia. Collective Negotiations: Negotiable Items Under the Common Law in the State of New Jersey. unpublished report submitted in partial fulfillment of course requirements for TA 4143, Law and Educational Institutions, Professor E. Reutter, Teachers College, Summer, 1977.

Shanker, Albert. "Why Teachers Need the Right to Strike." Monthly Labor Review 99: 48 - 51. Sept, 1973.

Stern, James et al. Final Offer Arbitration. Lexington, Mass.: Lexington Books. 1975.

Teacher STrike Report 1978 - 79 Pennsylvania Public Schools. Harrisburg, Pennsylvania: Pennsylvania Department of Education, June 1979.

Wellington, Harry and Ralph Winter. The Unions and the Cities. Washington, D.C.: The Brookings Insitution, 1971.

_____. "The Limits of Collective Bargaining in Public Employment." Yale Law Journal 78: no 7, 1107 - 1127. June 1969.

Transcripts and Hearing Testimony

Heddinger, Fred M. "Statement by: Pennsylvania School Boards Association Before Special Legislative Committee on Act 195." Presented at Harrisburg, Pennsylvania, May 17, 1973.

Angle, Jacque D. "Testimony Before the Governor's Study Commission on Public Employe Relations." Presented on April 5, 1977. Harrisburg, Pennsylvania State Education Association.

Bertolino, Jack. "Jersey Justice -- Time for a Change." Trenton, New Jersey: New Jersey Education Association, November, 1973.

"Legislative Goals." Trenton, New Jersey: New Jersey School Boards Association, 1979.

New Jersey Education Association Legislative Bulletin, No. 4. Trenton, New Jersey: February 1, 1978.

New Jersey Education Association Legislative Bulletin, No. 9. Trenton, New Jersey: March 28, 1978.

Notes regarding remarks of Jeffrey Tener to Assembly Labor Committee, May 1, 1978, concerning A-2, Police and Firemen Arbitration Act sent by Jack Bertolino, NJEA, Oct, 1979.

"Position Statement S-1151 (Dodd) Public School Employee Strike Penalties." Trenton, New Jersey: New Jersey School Boards Association, undated.

"Public Hearing Before Assembly Labor Committee on Assembly, No. 553." Held at Trenton, New Jersey: May 15, 1978.

"Rationale for Public Employee Right to Strike." Statement by Perry Bullard, Michigan State Representative, Labor Committeeman, concerning HB 4645 -- Michigan Right to Strike Bill. undated.

"Report of the Working Conditions Committee to the Delegate Assembly." Presented on January 22, 1977. Trenton, New Jersey: New Jersey Education Association.

"Report of the Working Conditions Committee to the Delegate Assembly." Presented on September 15, 1979. Trenton, New Jersey: New Jersey Educaion Association.

Schartz, Lawrence S. "Testimony presented to the Assembly Labor Committee." Presented at Trenton, New Jersey: May 15, 1978.

Statement by John Molloy, Uniserve Representative, New Jersey Education Association, before the New Jersey Education Association Working Conditions Committee, March 24, 1979.

Testimony by Jack Bertolino, Director of Field Services, NJEA, before the Assembly Committee on Labor, Industry and Professions, regarding Bill No. 1448, March 26, 1976.

"Testimony submitted on behalf of the NJEA, presented by Arthur Lehrhaupt, NJEA Vice Pres., Jack Bertolino, Dir. of Field Services, and Frederick L. Hipp, Executive Director, before the NJ Senate Conference and Coordinating Committee and the NJ Assembly Labor Committee regarding S-1087 and S-1120 on May 7, 1974." Trenton, New Jersey, NJEA, 5/7/74.

Testimony submitted on behalf of New Jersey Education Association by Kathryn Stillwell, NJEA President and Jack Bertolino, Director of Field Services before the New Jersey Legislative Public Employer-Employee Relations Study Commission regarding Chapter 123, P.L. 1974 on March 5, 1975.

Unger, Albert F. Transcript of statement made in hearings prior to issuance of "The Jones Report" of the Governor's Study Commission on Public Employe Relations.

Correspondence and Communications

Kay Bard, New Jersey State Library, Law and Legislative Services Director. telephone conversation, Oct 4, 1979.

Jack Bertolino, NJEA Director of Field Services, telphone conversation, Oct 4, 1979.

New Jersey Education Association, letter from Jack Bertolino, Oct 12, 1979.

Al Burstein, New Jersey Assemblyman, telephone conversation, Oct 19, 1979.

John Biondi, NJEA field representative, telephone conversations between Oct, 1979 and Dec 1979.

Gary Davis, Assistant for Government Relations, Pennsylvania State Education Association, telephone conversation, Oct 15, 1979.

Chris Jackman, New Jersey Assemblyman, telephone conversation, Oct 4, 1979.

Ray Peterson, New Jersey State Federation of Teachers, President, telephone conversation, Oct 11. 1979.

Marty Risch, Bergen County, N.J. Legislative Representative for New Jersey School Boards Association, telephone conversation Oct 11, 1979.

Public Service Research Council, letter from Roman Rice, Director of Legislative Affairs, Oct 19, 1979.

Public Employment Relations Commission of N.J. letter from Jeffrey Tener, Commission Chairman, Oct 19, 1979.

Albert Unger, Pennsylvania School Boards Association, telephone conversation Oct 5, 1979.

New Jersey School Boards Association, letter from William Wallen, Legislative Analyst, Oct 4, 1979.

Statutes and Proposed Legislation

New Jersey Assembly No. 455. Pre-filed for introduction in the 1978 session by Assemblyman Chris Jackman.

New Jersey Assembly, No. 553. Introduced Jan 30, 1978 by Assemblyman Al Burstein and Assemblywoman Kiernan.

New Jersey Senate, No. 1151. Introduced May 8, 1978 by Senator Dodd.

Pennsylvania Act 195. Public Employe Relations Act passed in 1970.

ASSEMBLY, No. 455

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Assemblyman JACKMAN

AN ACT to amend the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title was amended by P. L. 1968, c. 303.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 8 of P. L. 1941, c. 100 (C. 34:13A-8) is amended to read as follows:

8. *a.* Nothing in this act shall be construed to interfere with, impede or diminish in any way the right of private employees to strike or engage in other lawful concerted activities.

b. Except as provided in subsection c. of this section, nothing in this act or in any other law of the State of New Jersey shall be construed to interfere with, impede, or diminish the right of a recognized representative of public employees selected or designated pursuant to the provisions of section 7 of P. L. 1968, c. 303, to engage in a strike for the purpose of establishing, maintaining, protecting, or improving terms and conditions of employment, or of a public employee to participate in such a strike.

c. No court of the State of New Jersey nor any judge or judges thereof shall issue a restraining order or temporary or permanent injunction in any case involving a strike by a recognized representative of public employees unless—

(1) The commencement or continuance of the strike poses a clear and present danger to the public health or safety which in light of all relevant circumstances it is in the best public interest to prevent: provided, that any restraining order or injunction issued by a court for this reason shall prohibit only such specific act or acts as shall be expressly determined to pose such clear and present danger; or

(2) The representative has failed to make a reasonable effort

to utilize the procedures provided in section 6, of P. L. 1941, c. 100, as amended for the resolution of impasse in negotiation; provide, that any restraining order or injunction issued by a court for this reason shall indicate the specific act or acts which the representative has failed to perform and shall remain in effect only until said act or acts shall have been performed; and such order or injunction shall be issued only on the basis of findings of fact made by the court or judge or judges after due notice and hearing in open court prior to the issuance of such restraining order or injunction.

d. Any restraining order or temporary or permanent injunction heretofore entered by any court of this State in any case involving a strike by a recognized representative of public employees shall be dissolved and any penalties imposed by reason of violation thereof shall be vacated and fines remitted, unless within 30 days after the effective date of this act findings of fact sufficient to support the order or injunction are made by the court or judge entering the same following the procedures set forth in section c.

e. Nothing contained in this section shall prevent a court from enforcing any lawful provision of an agreement covering terms and conditions of employment.

2. This act shall take effect immediately.

STATEMENT

This bill would give public employees the minimal elements of due process by granting a right to withhold services under certain circumstances.

A court would be empowered to issue a restraining order or a temporary or permanent injunction in any strike by a representative of public employees (1) that poses a clear and present danger to public health and safety or (2) in which the recognized employee representative has failed to make a reasonable effort to utilize the procedures provided by law for the resolution of an impasse. The procedures provided by law include mediation and fact-finding.

Since the enactment of P. L. 1968, c. 303, a number of severe impasses have occurred between recognized representatives of public employees and their public employers. At the present time, when a strike occurs or appears imminent, the employer appears in court and automatically secures an immediate temporary restraining order. This order usually prohibits the recognized employee representative from engaging in any concerted activity, including picketing, mass meetings and demonstrations. Since a

judge has no authority to do otherwise, he is usually forced to issue such an order regardless of the circumstances. As a result, public employees can be enjoined from striking even though there is extreme provocation by the employer and the public health or safety is not endangered.

The provisions of this bill should produce the peaceful settlement of most public employer-employee disputes. Because a court could no longer issue an instant injunction without due process, public employers will seek the resolution of differences through good faith negotiation. By the same token, a court would restrain a recognized employee representative that failed to negotiate in good faith or did not follow procedures established by law.

This legislation calls for the vacating of penalties and remission of fines arising out of violation of restraining orders and court injunction. Such action would be authorized unless the court or judge find by following procedures set forth in section c. within 30 days sufficient facts to support the order or injunction.

The public interest should be served by the establishment of this reasonable and fair balance in the negotiation process.

APPENDIX B

SUMMARY OF STRIKE ACTIVITY IN NEW JERSEY
1967 - 1977

Year	Number of Strikes	Duration in Days
1967 - 1978	4	1
1968 - 1969	11	2.8
1969 - 1970	9	6.3
1970 - 1971	3	3.6
1971 - 1972	4	4.5
1972 - 1973	8	3.5
1973 - 1974/ 1974 - 1975	5	3
1975 - 1976	14	6.3
1976 - 1977	13	3.8
1977 - 1978	9	4.3